80-839

Supreme Court, U. S.
FILED
NOV 21 1980
MICHAEL RODAK, JR., CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

JOSEPH MARTIER,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Can a self-incriminating statement be used against a Defendant at a criminal trial when the evidence indicates that the Defendant was not aware of his position when the statement was made due to the behavior of the arresting officers?

2. Can a self-incriminating statement be used against a Defendant of a criminal conspiracy trial in a form summarized by the government to indicate that the Defendant acted alone, rather than in concert with others?

3. Can one of three alleged co-conspirators be tried in a protracted criminal proceeding when another of the alleged co-conspirators voluntarily absents himself early in the proceedings, leaving behind voluminous evidence unconnected with any counts of the conspiracy?

PARTIES TO THE PROCEEDING BELOW

The caption in the United States Court of Appeals for the Third Circuit read as follows:

UNITED STATES OF AMERICA,
Appellee

V.

JOSEPH MARTIER and
CHRISTOPHER JASTRZEBSKI,
Appellants.

That caption represented all of the parties to those proceedings.

REFERENCE TO OPINIONS

No final opinions were given in either the Third Circuit Court of Appeals or the Western District of Pennsylvania. However, Judgment Orders and Memorandum Opinions will be reproduced in the Appendices hereto.

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STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals for the Third Circuit, printed in Appendix A hereto, was made and entered on September 23, 1980. The Memorandum Order of the District Court for the Western District of Pennsylvania denying the Suppression Motion of Defendant Martier, printed in Appendix B hereto, was made and entered on September 20, 1980. The denial by Judge Cohill of the District Court of Defendant Martier's objections to the government's method of introducing an incriminating statement took place at sidebar on or about October 1, 1980. Appropriate portions of the Trial Transcript are printed in Appendix C hereto. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

STATUTES INVOLVED

The statutes involved are as follows:

21 U.S.C. 846

21 U.S.C. 841(a)(1)

18 U.S.C. 2

21 U.S.C. 843(b)

(Schedule I and Schedule II controlled substances)

The full text of each of these statutes is printed in Appendix D hereto.

STATEMENT OF THE CASE

The Petitioner was arrested on May 29, 1979 at 7:30 P.M. near Pittsburgh, Pennsylvania. He was eventually indicted on 13 counts of crimes involving conspiracy, possession, possession with intent to distribute, distribution and use of a telephone in connection with a Schedule I controlled substance and a Schedule II controlled substance. He was convicted on 12 of these counts on October 11, 1979, by a jury in the U.S. District Court for the Western District of

Pennsylvania.

Mr. Martier made several statements on the night of his arrest and these statements, along with physical evidence garnered by the police as a result of the statements, were used against Mr. Martier at trial. The testimony of government witnesses indicated that Mr. Martier was arrested in a tavern along with another alleged co-conspirator, Christopher Jastrzebski, in a suburb of Pittsburgh after an alleged sale of a controlled substance to a government informant named John Palmer. Both men were read their Constitutional rights and each said he understood those rights. Mr. Martier was not asked if he waived those rights.

Mr. Martier was handcuffed and taken to a car in which he was to be driven to the Federal Building in Pittsburgh. He had to wait five minutes of so before entering the car in order to calm down because he

was hyperventilating according to government witnesses. One government witness who testified as to having been in the presence of people who had taken one of the substances involved in this case, stated that hyperventilation was sometimes a symptom of use of that substance.

When Mr. Martier was placed in the car, he asked if he could go to jail for the crimes with which he was charged. He was informed that he probably could. He was also informed that he could get an OR bond and that it was in his best interest to cooperate with the police. Mr. Martier then made an incriminating statement. He was taken to a 4 X 4 cell in Pittsburgh where he sat for some time. While at the Federal Building, he expressed his fear of jail to several of the government agents in the area. He was told of homosexual rapes which take place in the Allegheny County Jail

where he was told he was to be housed. Mr. Martier made another statement to another officer after he was informed of possible sentences he could receive for the crimes with which he was charged and that things could go easier on him if he cooperated with the police. As a result of the statements made by Mr. Martier, the government agents collected a sizeable quantity of physical evidence.

At 1:15 A.M. (May 30, 1979), Mr. Martier was asked to make a taped statement. At that time he asked if he could have an attorney present and was told that he could. He mentioned that he had a neighbor who was an attorney but that he thought that the attorney might be angry with him if he had to come downtown in the middle of the night. He expressed a desire to get it done and, after receiving his constitutional rights for only the second time that night, he

gave a statement which, when transcribed, was 47 pages long.

At the time of the trial, Mr. Martier's statement and all of the physical evidence adduced therefrom, were used against him. The only evidence directly linking Mr. Martier to the illegal substances other than the statement and its fruits was the testimony of John Palmer who admitted to a long criminal record and to the fact that he was testifying in order to avoid a long prison sentence. Palmer also testified that he was receiving money from the government.

Mr. Martier's 47 page statement was introduced before the jury as a summary which, when transcribed, was three pages long and appeared in the singular as though Martier had acted on his own.

Mr. Martier filed a suppression motion citing, generally, that his statement had not been voluntary and asking that the

statement and its fruits be suppressed. The hearing on the suppression motion took place from September 17-September 19, 1979. On September 20, 1979, an Order was entered denying that motion (Appendix B).

The jury trial took place from September 21, 1980 through October 11, 1980. On the third day of those proceedings, James Boyd, an alleged co-conspirator, voluntarily absented himself from the proceedings. He did not reappear. The trial judge denied Mr. Martier's motion for mistrial and severance and continued to try Boyd in abstentia along with Mr. Martier. Several days of testimony and much of the voluminous evidence pertained to counts against Boyd which did not concern Mr. Martier. A verdict was returned on October 11, 1979 and Mr. Martier was found guilty on 12 of the 13 counts charged. An appeal was taken to the Third Circuit Court of Appeals and a Judgment

Order denying the Appeal and indicating the issues appealed was entered on September 23, 1980. It is on this Order which Mr. Martier Petitions for a Writ of Certiorari.

ARGUMENT

I

The case of Miranda v. Arizona, 384 U.S. 438 is the fountainhead case in determining rights of individuals charged with crimes. One of the many cases arising out of Miranda was Brady v. United States, 397 U.S. 742 which held that,

> "...waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." (p.748)

Brady also held that, in order to be admissible,

> "...a confession must be free and voluntary; that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence."

It is clear from the record that Mr. Martier did not have sufficient awareness of his circumstances or the likely consequences of his actions. He originally asked if he could go to jail for the crimes he was charged with and, six hours later, indicated that he thought an attorney might be angry if he had to get up in the middle of the night in order to advise him as to the taping of a statement which he had essentially given several times previously that evening.

Mr. Martier's confusion can be traced in the record to statements of government agents concerning imprisonment and, in some instances, some of the hazards thereof, followed closely by statements to the effect that things would go easier if he would cooperate. The record shows that Mr. Martier was operating under the assumption that he was cooperating in exchange for implied

promises in every instance in which he made a statement and that assumption, brought about by the behavior of government agents, made it impossible for Mr. Martier to reasonably assess his position and consequences of his actions and rendered his statement involuntary under Brady standards.

For these reasons, the statement of Mr. Martier and the physical evidence garnered therefrom should have been suppressed and the Judgment Order of the Court of Appeals for the Third Circuit upholding the decision of the lower Court with regard to this issue, was in error.

II

The case of Bruton v. United States, 391 U.S. 123, recognized the principle that one aspect of statements in conspiracy cases is the dissipation of guilt. Apparently in an attempt to avoid problems under Bruton and Parker v. Randolph, 25 Cr. L. 3085,

which provided that interlocking confessions of co-conspirators may be used in evidence, the government reduced Mr. Martier's 47 page statement to a three page summary which indicated to the jury that Mr. Martier acted alone rather than in concert with others and that the statement to this effect came from his own mouth. Mr. Martier urges that this was not the case and that the presentation to the jury in this manner, over objections of counsel, was so prejudicial as to deprive him of a fair trial. The U.S. Court of Appeals for the Third Circuit was in error in upholding the Judgment of the lower Court with regard to this issue.

III

Counsel for the Petitioner has been able to find no law directly on point with regard to the situation involved in the third question presented. It is clear that a Defendant in a criminal proceeding can be

tried in abstentia if his absence is found to be voluntary. James Boyd was found to be voluntarily absent. There is some support for the position that a Defendant may be tried despite the voluntary absence of an alleged co-conspirator. Mr. Martier would argue that this position is violative of the guaranteed rights to a fair trial provided in the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

There is apparently no authority for the situation where an alleged co-conspirator voluntarily absents himself early in a protracted and complicated proceeding and that proceeding is carried on against the remaining alleged co-conspirators as well as the absent party and much of the testimony and physical evidence introduced pertains to crimes which concern the absent party but not the remaining parties. Mr.

Martier experienced such a situation. James Boyd's absence could not be explained to the jury but that jury was told he was still being tried. The probabilities of prejudice against Boyd in the minds of the jurors had to be overwhelming and this prejudice had a high probability of flowing to Mr. Martier in that he was associated with Boyd in the minds of the jurors through the conspiracy charges. The sinister disappearance of Boyd coupled with the plethora of testimony and physical evidence pertaining to crimes with which Mr. Martier was not charged, prejudiced the jury to an extent that Mr. Martier could not have received a fair trial regardless of any instruction to that jury. The U.S. Court of Appeals for the Third Circuit was in error in upholding the decision of the Trial Judge in denying Mr. Martier's motion for a mistrial with regard to this issue.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NOS. 79-2731, 79-2732

UNITED STATES AMERICA

V.

JAMES BOYD, A/K/A/ J.B.
JOSEPH MARTIER, CHRISTOPHER
JASTRZEBSKI, JAMES WOLFE,
STEVEN STEFANIAK, DAVID BLAIR,
PATRICIA PISTININZI

Joseph Martier, Appellant
in 79-2731
Christopher Jastrzebski, Appellant in
79-2732

Appeal from the United States District Court
for the Western District of Pennsylvania
Crim. Nos. 79-00120-02/03

Argued September 18, 1980

Before: ADAMS, HUNTER and HIGGINBOTHAM,
Circuit Judges.

JUDGMENT ORDER

After considering the contentions raised by appellants, namely, that (1) the trial judge committed reversible error in denying the suppression motions of defendants Martier and Jastrzebski, particularly on the basis of their Miranda violation arguments; (2) the trial judge committed reversible error in admitting the redacted statements of defendants Martier and Jastrzebski over their objections; and (3) the trial judge committed reversible error in denying the motions of the defendants Martier and Jastrzebski, for mistrial following the disappearance of defendant Boyd, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

/s/ Arlin M. Adams
Circuit Judge

ATTEST: /s/Sally Mrvos
Sally Mrvos, Clerk

DATED: SEP 23, 1980

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
V.	)	CRIMINAL DOCKET
	)	NO. 79-120
(1) JAMES BOYD,	)	
(2) JOSEPH MARTIER,	)	
(3) CHRISTOPHER Z. JASTRZ-EBSKI,	)	
	)	
(7) PATRICIA PISTININZI,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

Defendant Martier has moved to suppress statements made to agents of various police agencies by him whil in custody on May 29, 1979 and May 30, 1979 following his arrest. He also moves to suppress all fruit of this allegedly poisonous tree. The Defendant bases his motion on alleged violations by federal and state agents of 18 U.S.C. Sec. 3501(c) (1976) and the Fourth, Fifth, Sixth and Fourteenth Amendments of

the United States Constitution. After considering the evidence presented at a hearing held on the Defendant's motion, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Martier's motion to suppress is DENIED.

Specifically, we find that the Defendant Martier, who had not been indicted or arraigned at the time that he made the statements in question, had no Sixth Amendment right to counsel because adversary proceedings had not yet commenced. See Moore v. Illinois, 434 U.S. 220, 231 (1977); Brewer v. Williams, 430 U.S. 387, 400-01 (1977). Moreover, we hold that the agents did not violate the defendant's Fifth and Fourteenth Amemdment rights. The agents gave the defendant a full "Miranda warning" upon his arrest. Although the defendant was understandably nervous at the time of his arrest, the evidence shows that his ability to un-

derstand his rights was not impaired. Subsequent statements made by the Defendant in the hours following his arrest, although not preceded by renewed Miranda warnings, are admissible. Miranda v. Arizona, 384 U.S. 436 (1966), does not require the police to repeat the warning where the defendant received a full warning at the time of his arrest, affirmatively indicated in response to the warning that he understood his rights, remained in the custody of the arresting officers until he made the statements, promptly indicated that he wished to cooperate with authorities, and understood the purpose of the subsequent questioning. See State v. Reilly, 269 N.W.2d 343, 347 (Minn. 1978). We find that the defendant did not request counsel prior to giving a taped statement, but rather, that he considered and rejected the possibility of obtaining counsel. Furthermore, the evidence would not support

a finding that the defendant's will was overborne by the agents, thus making his statements involuntary. See Rogers v. Richmond, 365 U.S. 534, 544 (1961). The defendant was a well-educated adult, who began to cooperate soon after agents took him into custody. The agents did not threaten or entice the defendant but merely provided him with information that would enable him to better analyze his position. See United States v. Barfield, 507 F.2d 53, 55-57 (5th Cir.), cert. denied, 421 U.S. 950 (1975); United States v. Williams, 479 F.2d 1138, 1140 (4th Cir.), cert. denied, 414 U.S. 1025 (1973).

Since this Court has found no violation of the defendant's rights under the Fifth, Sixth and Fourteenth Amendments, the defendant's Fourth Amendment claim - that the searches were the fruit of the illegally obtained statements - must also fail.

Finally, the agents did not violate 18 U.S.C. Sec. 3501(c) (1976). The defendant had made a taped statement more than six hours after his arrest, but he had begun to cooperate soon after his arrest. Also, the agents had contacted a magistrate at about 8:20 P.M., or soon after they had arrested the defendant at seven that evening; the magistrate told them that he would not be available at his office for an arraignment until the following morning. See United States v. Edwards, 539 F.2d 689, 691 (9th Cir.), cert. denied, 429 U.S. 984 (1976); United States v. Ortega, 471 F.2d 1350, 1362 (2d Cir 1972), cert. denied, 411 U.S. 948 (1973); United States v. Gibbons, 437 F. Supp. 650, 653 (E.D. Pa. 1977), aff'd mem., 588 F.2d 824 (3d Cir. 1978).

APPENDIX C

PORTIONS OF TRIAL TRANSCRIPT -

JUDGE'S DENIAL OF DEFENDANT'S MOTION RESPECTING GOVERNMENT'S INTRODUCTION OF STATEMENT

Page 681 - 688 of Trial Transcript

The Court:

Well, now, I have had a chance to review the cases that the government cited, Belle and particularly this recent case of Parker against Randolph, which is at 25 Criminal Law Reporter at 3096. It is dated May 29, "79, and Parker holds that if you have got two interlocking confessions, Bruton doesn't apply unless there is some great inconsistency, as I read the thing, by the two confessions...As I see it, if Boyd were not in the case, absent somebody showing me something about how these two were terribly inconsistent, these two statements, I think these two statements would be admissible to Parker against Randolph. I think that they

would probably still be admissible under Parker against Randolph as all references to Boyd were redacted...

I think maybe the government's idea here isn't too bad, of making this into a summary, but what would be wrong, Mr. Antkowiak, with Mr. Weatherbee simply testifying--He took Martier's statement. What's wrong with him just testifying as to what Martier confessed relative to,.? and then you don't have a problem, and then Schmotzer would testify as to what Jastrzebski said.

These fellows have the benefit of having a copy of the tape in front of them, so any inconsistency or inaccuracy in that thing, they can certainly catch him on cross-examination. They have the whole thing... I think it is a greater advantage than most defense counsel have on that kind of thing.

Both the respective witnesses, as they

limit their testimony to the incriminating statements that the man made about himself, I think you avoid any possibility of prejudice to anybody...

. . .

I am just saying he ought to be instructed when he testifies to limit it to this redacted statement, I am not suggesting he read this.

I think it is more appropriate that he not read it, unless he needs to refresh his recollection.

Certainly this should not go to the jury.

. . .

Your objections to the method in which we are going to do this are overruled.

. . .

Page 785 - 787 of the Trial Transcript

Mr. Ceraso (Mr. Martier's Trial Counsel): Your Honor, it is not a proper state-

ment to make the agent get up there and indicate that Mr. Martier acted by himself relative to all the statements, because it is not a true statement relative to the words spoken by Mr. Martier, and if the agent intends to do that, then I would move for a mistrial at this point, because I do believe that it is prejudicial and puts Mr. Martier in a position where it appears that he did this on his own, not two in concert, and can place him in a position of jeopardy on his own, and that is not what the confession said.

The Court:

Well why don't we have a recess and you consult with your witness and make sure that he limits it to those things which Mr. Martier incriminated himself, not others, that's all...I don't think you can have it both ways, Mr. Ceraso. I think that that is not improper for him to say that... I

don't think you can cut it both ways, we will overrule that objection.

APPENDIX D

18 U.S.C. 2 - Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

21 U.S.C. 841(a)(1) - Prohibited Acts A-Penalties

(a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;

21 U.S.C. 843 (b) - Prohibited Acts C - Penalties

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this title or title III. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures,

or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

21 U.S.C. 846 - Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

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